

AMENDED IN ASSEMBLY APRIL 18, 2006

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2198

Introduced by Assembly Member Houston

February 22, 2006

An act to amend Sections 725, 2241, 2242, and 2242.1 of, and to repeal and add Section 2241.5 of, the Business and Professions Code, and to amend Section 11156 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2198, as amended, Houston. Health care: controlled substances and dangerous drugs.

Existing law makes it unprofessional conduct for specified health care providers to engage in repeated acts of clearly excessive prescribing or administering of drugs or treatment, ~~unless the health care provider is subject to specified penalties. Existing law prohibits disciplinary action under these provisions against a physician and surgeon who is acting lawfully in compliance with the California Intractable Pain Treatment Act.~~

~~This bill would delete the provision prohibiting, in addition, prohibit disciplinary action under these provisions against a physician and surgeon who is in compliance with the California Intractable Pain Treatment Act. The bill would define "clearly excessive" to mean an amount or extent that is without substantial medical basis and is substantially greater than the usual amount of prescribing, administering, or use of the therapeutic modalities has a medical basis~~

for prescribing, furnishing, dispensing, or administering of a dangerous drug or prescription controlled substance.

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. The California Intractable Pain Treatment Act, in the Medical Practice Act, authorizes a physician and surgeon to prescribe or administer controlled substances to a person in the course of treatment for a diagnosed condition causing intractable pain, except in certain circumstances, and prohibits disciplinary action against a physician and surgeon for such action.

~~This bill would define addict for purposes of these provisions. The bill would delete these provisions and would instead authorize a physician and surgeon to prescribe for, or dispense or administer to, a person *under his or her treatment* for a medical condition drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including intractable pain. The bill would require the physician and surgeon to exercise reasonable care in determining whether a particular patient or condition, or complexity of the patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. A violation of this requirement would be a crime. *Although the bill would exempt a physician and surgeon acting in accordance with these provisions from disciplinary action for the prescribing, dispensing, or administering of dangerous drugs or prescription controlled substances, it would expressly provide that the power of the board to deny, revoke, or suspend a license not be affected with regard to specified actions and that the governing body of a hospital not be prohibited from taking certain disciplinary action against a physician and surgeon.*~~

Existing law, except as specified, prohibits a person from prescribing or administering or dispensing a controlled substance to an addict or habitual user *or a person representing himself or herself as an addict or habitual user*. Existing law generally makes it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so, ~~but contains certain exceptions from this provision except as specified.~~

This bill would delete the provision making it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give

away, or administer certain drugs to an addict or habitué, or to offer to do so. The bill would authorize a physician and surgeon to prescribe, dispense, or administer prescription drugs, including prescription controlled substances, (1) to an addict under his or her treatment for a condition other than maintenance on, or detoxification from, prescription drugs or controlled substances and (2) under specified conditions to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances. The bill would also authorize prescription drugs or controlled substances to be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, in certain circumstances. A violation of ~~this requirement~~ *these requirements* would be a crime. *The bill would also revise the prohibition against prescribing, administering, or dispensing a controlled substance to an addict or habitual user to delete the reference to a habitual user, and to exempt activity pursuant to the above authorization. The bill would define addict for purposes of these provisions.*

Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without a good faith prior examination and medical indication. Existing law also, with specified exceptions, prohibits a person or entity from prescribing, dispensing, or furnishing, or causing to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices on the Internet for delivery to a person in California without a good faith prior examination and medical indication.

This bill would, for purposes of these provisions, require an appropriate prior examination instead of a good faith prior examination. The bill would make related legislative findings.

Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) The investigation and prosecution of pain management
4 cases in California have evolved over the past 15 years.

5 (b) The Pain Patient's Bill of Rights and the Intractable Pain
6 Treatment Act were created to ensure patients received adequate
7 pain medication and to protect a physician and surgeon from
8 being disciplined solely because of the amounts of controlled
9 substances he or she prescribed or administered.

10 (c) California recognizes that prescription medication,
11 including controlled substances, can play a critical role in the
12 treatment of pain, and, in and of itself, is an insufficient basis to
13 determine if a physician and surgeon has violated the standard of
14 care in his or her treatment of pain management patients.

15 ~~(d) California also recognizes that the Intractable Pain~~
16 ~~Treatment Act may be an impediment to easily accessible pain~~
17 ~~treatment which can be confusing to both licensees and~~
18 ~~regulating entities. It can also provide a false sense of security to~~
19 ~~licensees who may erroneously believe it immunizes them from~~
20 ~~any actions against their license.~~

21 ~~(d) Under-treatment of pain, including the use of opioids, is a~~
22 ~~continuing problem in the State of California, and some terms of~~
23 ~~the Intractable Pain Treatment Act are outdated and confusing.~~

24 (e) In recognition of the Medical Board of California's
25 consumer protection mandates, and in an attempt to provide
26 better treatment of pain patients, as well as protect the public
27 through the appropriate investigation and prosecution of those
28 who violate the standard of care when treating pain patients, the
29 Legislature recognizes that it is time to reflect upon the current
30 state of pain management to aid both those who treat pain
31 patients, as well as those who investigate and prosecute
32 physicians and surgeons.

33 SEC. 2. Section 725 of the Business and Professions Code is
34 amended to read:

35 725. (a) Repeated acts of clearly excessive prescribing,
36 furnishing, dispensing, or administering of drugs or treatment,
37 repeated acts of clearly excessive use of diagnostic procedures,
38 or repeated acts of clearly excessive use of diagnostic or

1 treatment facilities as determined by the standard of the
2 community of licensees is unprofessional conduct for a physician
3 and surgeon, dentist, podiatrist, psychologist, physical therapist,
4 chiropractor, or optometrist.

5 (b) Any person who engages in repeated acts of clearly
6 excessive prescribing or administering of drugs or treatment is
7 guilty of a misdemeanor and shall be punished by a fine of not
8 less than one hundred dollars (\$100) nor more than six hundred
9 dollars (\$600), or by imprisonment for a term of not less than 60
10 days nor more than 180 days, or by both the fine and
11 imprisonment.

12 ~~(e) For purposes of this section, "clearly excessive" shall mean~~
13 ~~an amount or extent that is both (1) without substantial medical~~
14 ~~basis and (2) substantially greater than the usual amount of~~
15 ~~prescribing, administration, or use of therapeutic modalities.~~

16 (c) *A practitioner who has a medical basis for prescribing,*
17 *furnishing, dispensing, or administering dangerous drugs or*
18 *prescription controlled substances shall not be subject to*
19 *disciplinary action or prosecution under this section.*

20 (d) *No physician and surgeon shall be subject to disciplinary*
21 *action pursuant to this section for treating intractable pain in*
22 *compliance with Section 2241.5.*

23 SEC. 3. Section 2241 of the Business and Professions Code is
24 amended to read:

25 2241. (a) A physician and surgeon may prescribe, dispense,
26 or administer prescription drugs, including prescription
27 controlled substances, to an addict under his or her treatment for
28 a condition other than maintenance on, or detoxification from,
29 prescription drugs or controlled substances.

30 (b) A physician and surgeon may only prescribe, dispense, or
31 administer prescription drugs or prescription controlled
32 substances to an addict for purposes of maintenance on or
33 detoxification from prescription drugs or controlled substances as
34 set forth in subdivision (c) or in Sections 11215, 11217, 11217.5,
35 11218, 11219, and 11220 of the Health and Safety Code. Nothing
36 in this subdivision shall authorize a physician and surgeon to
37 prescribe, dispense, or administer dangerous drugs or controlled
38 substances to a person he or she knows or reasonably believes is
39 using or will use the drugs or substances for a nonmedical
40 purpose.

(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

(d) For purposes of this section and Section 2241.5, “addict” means a person whose actions are characterized by one or more of the following:

(1) Impaired control over drug use.

(2) Compulsive use.

(3) Continued use despite ~~harm and craving~~ *harm*.

(4) *Craving*.

SEC. 4. Section 2241.5 of the Business and Professions Code is repealed.

SEC. 5. Section 2241.5 is added to the Business and Professions Code, to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

~~(b) A physician and surgeon’s authority under this section shall be subject to the provisions of Sections 725, 2234, 2241, 2242, and 2242.1, and Sections 11152, 11153, and 11154 of the Health and Safety Code. Nothing in this section shall authorize a physician and surgeon to prescribe, administer or dispense dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.~~

~~(c) Any physician and surgeon has the legal authority to treat a patient for pain using dangerous drugs or prescription controlled substances but the prescribing, administering, or dispensing~~

1 ~~physician and surgeon shall exercise reasonable care in~~
2 ~~determining whether a particular patient or condition, or~~
3 ~~complexity of the patient's treatment, including, but not limited~~
4 ~~to, a current or recent pattern of drug abuse, requires consultation~~
5 ~~with or referral to a more qualified specialist.~~

6 *(b) No physician and surgeon shall be subject to disciplinary*
7 *action for prescribing, dispensing, or administering dangerous*
8 *drugs or prescription controlled substances in accordance with*
9 *this section.*

10 *(c) This section shall not affect the power of the board to deny,*
11 *revoke, or suspend the license of a physician and surgeon who*
12 *does any of the following:*

13 *(1) Violates Section 2234, 2241, 2242, or 2242.1.*

14 *(2) Fails to keep complete and accurate records of purchases*
15 *and disposals of substances listed in the California Uniform*
16 *Controlled Substances Act (Division 10 (commencing with*
17 *Section 11000) of the Health and Safety Code) or controlled*
18 *substances scheduled in the federal Comprehensive Drug Abuse*
19 *Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.),*
20 *or pursuant to the federal Comprehensive Drug Abuse*
21 *Prevention and Control Act of 1970. A physician and surgeon*
22 *shall keep records of his or her purchases and disposals of these*
23 *controlled substances or dangerous drugs, including the date of*
24 *purchase, the date and records of the sale or disposal of the*
25 *drugs by the physician and surgeon, the name and address of the*
26 *person receiving the drugs, and the reason for the disposal or the*
27 *dispensing of the drugs to the person, and shall otherwise comply*
28 *with all state record keeping requirements for controlled*
29 *substances.*

30 *(3) Writes false or fictitious prescriptions for controlled*
31 *substances listed in the California Controlled Substances Act or*
32 *scheduled in the federal Comprehensive Drug Abuse Prevention*
33 *and Control Act of 1970.*

34 *(4) Prescribes, administers, or dispenses in violation of this*
35 *chapter, or in violation of Chapter 4 (commencing with Section*
36 *11150) or Chapter 5 (commencing with Section 11210) of*
37 *Division 10 of the Health and Safety Code.*

38 *(d) A physician and surgeon shall exercise reasonable care in*
39 *determining whether a particular patient or condition, or the*
40 *complexity of a patient's treatment, including, but not limited to,*

1 *a current or recent pattern of drug abuse, requires consultation*
2 *with, or referral to, a more qualified specialist.*

3 *(e) Nothing in this section shall prohibit the governing body of*
4 *a hospital from taking disciplinary actions against a physician*
5 *and surgeon pursuant to Sections 809.05, 809.4, and 809.5.*

6 SEC. 6. Section 2242 of the Business and Professions Code is
7 amended to read:

8 2242. (a) Prescribing, dispensing, or furnishing dangerous
9 drugs as defined in Section 4022 without an appropriate prior
10 examination and a medical indication, constitutes unprofessional
11 conduct.

12 (b) No licensee shall be found to have committed
13 unprofessional conduct within the meaning of this section if, at
14 the time the drugs were prescribed, dispensed, or furnished, any
15 of the following applies:

16 (1) The licensee was a designated physician and surgeon or
17 podiatrist serving in the absence of the patient's physician and
18 surgeon or podiatrist, as the case may be, and if the drugs were
19 prescribed, dispensed, or furnished only as necessary to maintain
20 the patient until the return of his or her practitioner, but in any
21 case no longer than 72 hours.

22 (2) The licensee transmitted the order for the drugs to a
23 registered nurse or to a licensed vocational nurse in an inpatient
24 facility, and if both of the following conditions exist:

25 (A) The practitioner had consulted with the registered nurse or
26 licensed vocational nurse who had reviewed the patient's records.

27 (B) The practitioner was designated as the practitioner to serve
28 in the absence of the patient's physician and surgeon or
29 podiatrist, as the case may be.

30 (3) The licensee was a designated practitioner serving in the
31 absence of the patient's physician and surgeon or podiatrist, as
32 the case may be, and was in possession of or had utilized the
33 patient's records and ordered the renewal of a medically
34 indicated prescription for an amount not exceeding the original
35 prescription in strength or amount or for more than one refilling.

36 (4) The licensee was acting in accordance with Section
37 120582 of the Health and Safety Code.

38 SEC. 7. Section 2242.1 of the Business and Professions Code
39 is amended to read:

1 2242.1. (a) No person or entity may prescribe, dispense, or
2 furnish, or cause to be prescribed, dispensed, or furnished,
3 dangerous drugs or dangerous devices, as defined in Section
4 4022, on the Internet for delivery to any person in this state,
5 without an appropriate prior examination and medical indication,
6 except as authorized by Section 2242.

7 (b) Notwithstanding any other provision of law, a violation of
8 this section may subject the person or entity that has committed
9 the violation to either a fine of up to twenty-five thousand dollars
10 (\$25,000) per occurrence pursuant to a citation issued by the
11 board or a civil penalty of twenty-five thousand dollars (\$25,000)
12 per occurrence.

13 (c) The Attorney General may bring an action to enforce this
14 section and to collect the fines or civil penalties authorized by
15 subdivision (b).

16 (d) For notifications made on and after January 1, 2002, the
17 Franchise Tax Board, upon notification by the Attorney General
18 or the board of a final judgment in an action brought under this
19 section, shall subtract the amount of the fine or awarded civil
20 penalties from any tax refunds or lottery winnings due to the
21 person who is a defendant in the action using the offset authority
22 under Section 12419.5 of the Government Code, as delegated by
23 the Controller, and the processes as established by the Franchise
24 Tax Board for this purpose. That amount shall be forwarded to
25 the board for deposit in the Contingent Fund of the Medical
26 Board of California.

27 (e) If the person or entity that is the subject of an action
28 brought pursuant to this section is not a resident of this state, a
29 violation of this section shall, if applicable, be reported to the
30 person's or entity's appropriate professional licensing authority.

31 (f) Nothing in this section shall prohibit the board from
32 commencing a disciplinary action against a physician and
33 surgeon pursuant to Section 2242.

34 SEC. 8. Section 11156 of the Health and Safety Code is
35 amended to read:

36 11156. (a) ~~No~~ *Except as provided in Section 2241 of the*
37 *Business and Professions Code, no person shall prescribe for or*
38 *administer, or dispense a controlled substance to an addict, or to*
39 *any person representing himself or herself as such, except as*
40 *permitted by this division.*

1 (b) For purposes of this section, “addict” means a person
2 whose actions are characterized by one or more of the following:

- 3 (1) Impaired control over drug use.
4 (2) Compulsive use.
5 (3) Continued use despite ~~harm and craving~~. *harm*.
6 (4) *Craving*.

7 SEC. 9. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the
12 penalty for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition of a
14 crime within the meaning of Section 6 of Article XIII B of the
15 California Constitution.